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Filing Date: June 28, 2003
Title: SYSTEMS AND METHODS FOR NETWORK ADDRESS FAILOVER

REMARKS

This responds to the Office Action mailed on <u>April 4, 2008</u>.

No claims have been amended, canceled, or added; as a result, claims 1-21, 23-42 are now pending in this application.

Applicant notes that while the summary page of the Office Action states claims 1-21 and 23-42 are pending, paragraph 2 of the Office Action incorrectly states that claims 2, 11 and 19-20 have been canceled and that claims 1, 3-10 and 12-18 are pending for further examination. Claim 22 was cancelled in a previous response, claims 1-21 and 23-41 remain pending.

§102 Rejection of the Claims

Claims 1-10, 14-32, and 36-42 were rejected under 35 U.S.C. § 102(e) for anticipation by Hebert et al. (U.S. Patent No. 6,718,383). Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, "[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). Applicants (hereinafter Applicant) respectfully submits that the Office Action did not make out a *prima facie* case of anticipation because Hebert does not teach each and every claim element.

Claim 1 recites "analyzing the configuration data to determine if the first network address can be used on the second network interface." Independent claims 16, 23, and 38 recite similar language with respect to analyzing configuration data to determine if it is possible to move a first network address from a first network interface to a second network interface. The Office Action cites Hebert as disclosing this feature of claim 1.[1] In response to Applicant's argument in the

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[1] Final Office Action dated 4/4/08 pg. 3, 9-14 (hereinafter Office Action) ("detecting a failure in the first network interface, and analyzing the configuration data to determine if the first network address can be used on the second network interface, and if so, moving the first network address to the second network interface (= detecting if there is

Non-Final Office Action response dated December 31, 2007 (hereinafter Non-Final Response)

that Hebert does not disclose performing any analysis on the configuration prior to moving a

network address from one interface to another, the Office Action states:

> Clearly, Hebert discloses monitoring the heartbeat and detecting a failure in heartbeat
> [see Hebert, Col. 6, Line 46 to Col. 7, Line 45] and determining whether threshold
> parameter has been exceeded (including reading a threshold parameter from a
> configuration file) [see Hebert, Col. 11, Line 55 to Col. 12, Line 12]. These examples
> illustrate the process of detecting a failure in the first network interface, and **analyzing
> the configuration data** to determine if the first network address can be used on the
> second network interface.[2]

Applicant respectfully re-submits, as first stated in the Non-Final Response, that the neither the

cited sections of Hebert, or Hebert as a whole, disclose the element of claim 1 "analyzing the

configuration data to determine if the first network address can be used on the second network

interface." Hebert states:

> If a failure of one or more of the trunking connections in the primary connection is
> detected (decision block **1006**), a determination is made as to whether a *performance
> related threshold parameter* has been exceeded (decision block **1007**). Such a
> determination may include reading a threshold parameter from a configuration file as
> described above. If the threshold parameter has not been exceeded, flow returns to block
> **1004**.[3] (emphasis added).

As the Office Action states, Hebert does disclose determining whether or not a threshold

parameter has been exceeded, but it is silent as to determining "if the first network address can

be used on the second network interface." Instead, Hebert discloses checking if a performance

related threshold parameter has been exceeded. In other words, Hebert uses a performance

threshold parameter that may be read from a configuration file to determine if a failover should

be initiated. However, Hebert does not disclose using configuration data to determine if a first

network address can be used on a second network interface, an activity that takes place after it is

determined that a failover should occur. All of the examples provided in the "Response to

Applicant's Arguments" section of the Office action, e.g., monitoring the heartbeat etc. are also

examples of activities that take place prior to failover. Hebert simply does not disclose using

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a failure on a primary network connection, then configuring the second network interface with the parameters of the
primary network interface) [see Col. 2, Lines 8-58 and Col. 6, Line 46 to Col. 8, Line 5 and Col. 9, Lines 7-59].").
[2] Office Action, pg. 9 lines 8-14.
[3] Hebert, Col. 11, Line 64 to Col. 12, Line 5).

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configuration information to determine if a second interface can be used after the failover condition has been detected. Thus, Hebert does not anticipate claims 1, 16, 23, or 38. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 1, 16, 23, and 38.

Claims 2-10 and 14-15 depend either directly or indirectly from claim 1. Claims 17-21 depend either directly or indirectly from claim 16. Claims 24-32 and 36-37 depend either directly of indirectly from claim 23. Claims 39-42 depend either directly or indirectly from claim 38. These dependent claims inherit the elements of their respective base claims, including the element of analyzing configuration data to determine if a network address may be moved from a first interface to a second interface. Therefore, claims 2-10, 14-15, 17-21, 24-32, 36-37, and 39-42 are not anticipated by Hebert for at least the reasons discussed above regarding their respective base claims 1, 16, 23, and 38. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 2-10, 14-15, 17-21, 24-32, 36-37, and 39-42.

Further, claims 4, 8, 15, 26, 30, and 37 recite analyzing the configuration data for certain conditions prior to moving a first network address from a first interface to a second interface. For example, claims 4 and 26 recite determining if a first and second address are on the same network. Claims 8 and 30 recite determining if another application gateway device on the network is configured to use the first network address. Claims 15 and 37 recite determining if another application gateway device is already using the first network address. As discussed above, the system in Hebert does not analyze any configuration data except to perhaps check if a performance related threshold parameter has been exceeded. The system in Hebert appears to rely on the system being configured properly prior to any failover. Hebert is silent as to analyzing the configuration data to determine if the address may be moved to a second interface. For example, Hebert does not disclose checking the configuration to determine "if the first network address and the second network address are on the same network," as disclosed in claims 4 and 26. Also, Hebert does not disclose "determining if another application gateway device on the network is configured to use the first network address," as recited in claims 8 and 30. Hebert does not disclose "determining if the network address is in use by another application gateway device on a network communicatively coupled to the first and second network interfaces," as recited in claims 15 and 37, either. The Office Action cites portions of Hebert that

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discuss general characteristics of a network. However, applicant is not claiming the general characteristics, rather the claims recite checking configuration data and using the characteristics to determine if a failover to a second interface can take place. Accordingly, Hebert does not disclose each and every element of claims 4, 8, 15, 26, 30, and 37. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 4, 8, 15, 26, 30, and 37.

Further, claims 5 and 27 recite "determining if the first network address and the second network address are on the same subnet." As discussed in the Non-Final Response, Applicant respectfully disagrees with the Office Action's interpretation of Hebert in relation to the recited claim language.[4] Hebert merely provides a general description of the use of subnets. Hebert is silent as to analyzing a system configuration to determine if the first and second network addresses are on the same subnet prior to moving the first network address to a second network interface. Accordingly, Hebert does not disclose each and every element of claims 5 and 27. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 5 and 27.

Additionally, claims 7, 14, 29, and 36 recite "issuing a gratuitous ARP packet." As discussed in the Non-Final Office Action response, Applicant respectfully disagrees with the Office Action's interpretation of Hebert in relation to the recited claim language.[5] Hebert merely discusses that the system uses the ARP protocol and does not disclose a "gratuitous" ARP packet. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 7, 14, 29, and 36.

Claims 9 and 31 recite "determining if the second network interface can support a VLAN (Virtual Local Area Network) associated with the first network address." As discussed in the Non-Final Office Action response, Applicant respectfully disagrees with the Office Action's interpretation of Hebert in relation to the recited claim language.[6] Hebert discloses the use of a "virtual IP address" and not a Virtual Local Area Network (VLAN). A virtual IP address is not the same thing as a Virtual Local Area Network, and the two concepts are totally distinct from one another. A VLAN may exist with virtual IP addresses and a Virtual IP address does not mandate a VLAN. Accordingly, Hebert fails to disclose determining if the second network

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[4] Non-Final Response pg. 12, lines 4-12.
[5] Non-Final Response pg. 12, lines 13-20.
[6] Non-Final Response pg. 12, line 21 to pg. 13 line 2.

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interface can support a VLAN. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 9 and 31.

§103 Rejection of the Claims

Claims 11-13 and 33-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hebert et al. (U.S. Patent No. 6,718,383) in view of Osafune et al. (U.S. Publication No. 2002/0023150). The determination of obviousness under 35 U.S.C. § 103 is a legal conclusion based on factual evidence. *See Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.,* 411 F.3d 1332, 1336-37 (Fed.Cir. 2005). The legal conclusion that a claim is obvious within § 103(a) depends on at least four underlying factual issues set forth in *Graham v. John Deere Co. of Kansas City,* 383 U.S. 1, 17, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966). The underlying factual issues set forth in *Graham* are as follows: (1) the scope and content of the prior art; (2) differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) evaluation of any relevant secondary considerations.

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. *In re Fine,* 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir.1988). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested, by the prior art. *In re Royka,* 490 F.2d 981, 180 USPQ 580 (CCPA 1974) ; M.P.E.P. § 2143.03. "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson,* 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970) ; M.P.E.P. § 2143.03. As part of establishing a *prima facie* case of obviousness, the Examiner's analysis must show that some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead an individual to combine the relevant teaching of the references. *Id.* To facilitate review, this analysis should be made explicit. *KSR Int'l v. Teleflex Inc., et al.,* 127 S.Ct. 1727; 167 L.Ed 2d 705; 82 USPQ2d 1385 (2007) (citing *In re Kahn,* 441 F. 3d 977, 988 (Fed. Cir. 2006)).

Claims 11-13 depend indirectly from claim 1 and claims 33-35 depend indirectly from claim 23. Each of these dependent claims 11-13 and 33-35 therefore inherit the elements of their respective base claims, including elements directed to analyzing the configuration data to determine if the first network address can be used on the second network interface. As discussed

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in detail above, Hebert does not disclose such elements. Additionally, Applicant submits that Osafune does not disclose analyzing configuration data to determine if a first network address can be moved to a second network interface. As a result, the cited references do not disclose each and every element of claims 11-13 and 33-35 resulting in differences between the claims at issue and the cited references. Therefore, claims 11-13 and 33-35 are not obvious in view of the combination of Hebert and Osafune. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 11-13 and 33-35.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6954 to facilitate prosecution of this application.
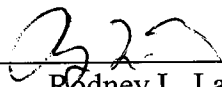
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Respectfully submitted,

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Date   June 4, 2008   By
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 4th day of June 2008.

Jonathan Ferguson   / Jonathan Ferguson /

Name   Signature